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DECISION



P. Dammert
Civ. Serv.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-188507

DATE: December 16, 1977

MATTER OF: Ada M. Lin - Salary Payment to Alien

DIGEST: Although Public Laws 92-49 and 92-351 prohibited use of appropriated funds to pay compensation of noncitizens, personnel of Department of Defense were specifically excluded from such prohibition by Public Laws 92-204 and 92-570. Therefore, alien employee may retain salary payments she received as employee of Department of Navy.

This action is in response to the request of Thomas Taylor, Director, Consolidated Civilian Personnel Office, Department of the Navy, Philadelphia, Pennsylvania, for a decision as to whether Mrs. Ada M. Lin is entitled to compensation for services performed as an employee of the Navy in spite of the fact that she was not a citizen of the United States at the time of her appointments.

The record shows that Mrs. Ada M. Lin was given a temporary appointment "Not to Exceed 700 Hours or 15 March 1972 at Noon" as a Research Chemist, effective November 15, 1971. In executing her Personal Qualifications Statement (SF-171) and Declaration of Appointee (SF-61B), Mrs. Lin answered "No" to the question "Are you a citizen of the United States of America?" She indicated on the SF-171 that she was a permanent resident of the United States. Her temporary appointment was terminated on May 27, 1972. No reason was given for the termination. Mrs. Lin was given a second temporary appointment "Not to Exceed 27 June 1972" on May 28, 1972. No SF-171 or SF-61B was issued for this appointment which was terminated on June 27, 1972. On October 30, 1972, Mrs. Lin was given yet another temporary appointment "Not to Exceed 29 November, 1972." On both the SF-171 and the SF-61B associated with this appointment, she answered the question "Are you a citizen of the United States of America?" with a "Yes." (We have been informally advised that Mrs. Lin became a citizen of the United States sometime prior to this appointment.)

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The Director of the Consolidated Personnel Office questions whether Mrs. Lin should be required to refund any of the salary she had received during the period in which she was not a citizen of the United States in view of the fact that no special authority had been obtained regarding an exception to the citizenship requirement found in chapter 338 of the Federal Personnel Manual (FPM) (1969 ed., February 7, 1969).

We do not have to consider the citizenship requirement of FPM chapter 338, because the United States Supreme Court ruled in Hampton v. Mow Sun Wong, 426 U.S. 88 (1976), that the Civil Service Commission regulations, in effect at the time involved here, imposing the citizenship requirement were unconstitutional. However, the United States Supreme Court did not invalidate the restrictions on hiring aliens found in various appropriations acts. Therefore, in order to determine whether authority existed for the lawful payment of salary to Mrs. Lin, we have reviewed the relevant appropriations acts for the period of her employment as an alien. Section 602 of the Treasury, Postal Service, and General Government Appropriation Act, 1972, Act of July 9, 1971, Public Law 92-49, 85 Stat. 108, 122, states in pertinent part:

"Unless otherwise specified and during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of this Act, who, being eligible for citizenship, had filed a declaration of intention to become a citizen of the United States prior to such date, (3) is a person who owes allegiance to the United States, or (4) is an alien from Poland or the Baltic countries lawfully admitted to the United States for permanent residence * * *."

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The Treasury, Postal Service, and General Government Appropriation Act, 1973, section 502, Act of July 13, 1972, Public Law 92-351, 86 Stat. 471, contains similar provisions.

However, noncitizens could properly be employed and compensated therefor within the Department of Defense in spite of the general restriction on hiring of noncitizens quoted above since section 703, of the Department of Defense Appropriation Act, 1972, Act of December 18, 1971, Public Law 92-204, 85 Stat. 716, 726, provides:

"During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense."

The Department of Defense Appropriation Act, 1973, section 703, Act of October 26, 1972, Public Law 92-570, 86 Stat. 1184, 1196, contains a similar provision.

Accordingly, since personnel of the Department of Defense were specifically excluded from restrictions on payment of compensation to noncitizens, Mrs. Lin was properly compensated and no collection action need be initiated.

R. J. K. 114
Deputy Comptroller General
of the United States